U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-S-

DATE: JULY 26, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a sailing competitor and coach, seeks classification as an individual of extraordinary ability in athletics. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only one of the ten initial evidentiary criteria, of which she must meet at least three. The Petitioner appealed the matter to us, and we dismissed the appeal.[1]

The matter is now before us on a joint motion to reopen and reconsider. With the motion, the Petitioner submits a letter from counsel and additional evidence, asserting that she meets at least three criteria. Upon review, we will deny the motion.

I. LAW

A motion to reopen is based on documentary evidence of new facts, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3).

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

[1] *See Matter of R-S-*, ID# 134825 (AAO Jan. 18, 2017).

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is a major, internationally recognized award). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

With the previous appeal, the Petitioner offered a September 2016 letter from the chairman of the racing and sailing school committees at the [redacted] in [redacted] New York, indicating that the club intends to employ her as a sailing competitor and coach.[2] As the Petitioner has not established that she has received a major, internationally recognized award, she must satisfy at least

[2] We will evaluate all evidence relating to her sailing achievements as both an athlete and a coach. We note that the U.S. Citizenship and Immigration Services (USCIS) Adjudicator's Field Manual (AFM) provides:

> In general, if a beneficiary has clearly achieved *recent* national or international acclaim as an athlete and has sustained that acclaim in the field of coaching/managing at a national level, adjudicators can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the beneficiary's area of expertise.

AFM ch. 22.22(i)(1)(C) (emphasis in original).

three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In dismissing the appeal, we found that the Petitioner met the awards criterion at 8 C.F.R. § 204.5(h)(3)(i) and the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). On motion, the Petitioner maintains that she also meets the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii), the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), and the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v). She further argues that she qualifies as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. Upon review of all of the evidence, we conclude that it does not support a finding that the Petitioner meets the plain language requirements of at least three criteria, nor has she established the level of expertise required for the classification sought.

A. Motion to Reconsider

For purposes of a motion to reconsider, the question is whether our decision was correct based on the record that existed at the time of adjudication. With respect to the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii), in addition to providing new evidence, which will be discussed as part of her motion to reopen, the Petitioner contends that she meets the criterion based on previously submitted evidence that she "was selected for participation in the representative for [six] consecutive years" and that her selection required outstanding achievements, as judged by national experts. The Petitioner previously offered a reference letter from who identified himself as "Coach of the While stated that the Petitioner "was a member of the and then the ' he did not provide their membership requirements or discuss their athlete selection process. Without supporting documentary evidence showing that the aforementioned teams required outstanding achievements of their members, as judged by recognized national or international experts, the Petitioner has not established that she meets this criterion.

Regarding the original contributions of major significance in the field criterion at 8 C.F.R. § 204.5(h)(3)(v), the Petitioner asserts that her scholarly "research was most highly praised by eminent academics from the with long years of experience and expertise in the field of sports." In addition, she contends that "her methodology is being applied by some of Russia's most eminent sailing coaches, including the coach of the team." As evidence under this criterion, the Petitioner previously offered four reference letters. In his letter of support, noted that "other coaches became interested in her innovative coaching methodology," and that he "was among those coaches who benefited from [the Petitioner's] ideas." In our appellate decision, we noted that did not identify her innovative methodologies or original ideas and explain how they were of major significance in the field of coaching or the sport of sailing.

In addition, and from the Department of Physical Culture and Sports at offered two jointly signed letters of support. They identified three research articles authored by the Petitioner at and asserted that her "papers were considered original contribution [*sic*] in the field of Physical Culture and Sports and were published in the University's academic journal." Our decision stated that while publication of the Petitioner's work by her university

showed that she added to the pool of knowledge in her field, the evidence was insufficient to demonstrate that her methods have affected the sport in a major way, that her techniques have been widely used to train sailing competitors, or that her work has otherwise risen to the level of contributions of major significance in the field.

Lastly, the Petitioner offered a letter of support from "senior coach of the indicated that the Petitioner's "method of preparation of sportsmen" was so impressive that she "decided to test her method of training." Additionally, asserted that the Petitioner's "technique works successfully with a team." In our decision, we noted that did not offer specific examples of how the Petitioner's training technique has affected the field or was otherwise commensurate with an athletic contribution of major significance in the sport of sailing. We further stated that the reference letters offered under this criterion were limited to the Petitioner's colleagues from Russia. Finally, we concluded that without additional, specific evidence showing that her work has been unusually influential, has substantially impacted her sport, or has otherwise risen to the level of original contributions of major significance in the field, the Petitioner had not established that she satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(v).

The arguments the Petitioner offers on motion do not establish that our appellate findings were based on an incorrect application of the law, regulation, or USCIS policy, nor does the motion demonstrate that our latest decision was erroneous based on the evidence before us at the time of the decision. Therefore, the motion to reconsider is denied.

B. Motion to Reopen

In support of her motion to reopen, the Petitioner offers further evidence for the criteria at 8 C.F.R. § 204.5(h)(3)(ii) and (iii), which we will address below.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner resubmits a 2006 certificate from the with an accompanying English language translation, stating that she was "awarded the Title ' In our previous decision, we noted that the Petitioner had initially provided an English language document entitled "Requirements and conditions for awarding the title but the record did not include the original document in the Russian language from the On motion, the Petitioner states: "We herewith enclose the original Russian language document to add probative value to the information provided." The evidence offered with the motion, however, does not include this document.

The Petitioner contends that her title of " is not a prize similar to a medal or certificate, but the highest recognition for athletes in various sports disciplines awarded by special Decree of the to a limited number of athletes for cumulative outstanding achievement and only after a number of rigorous demands have been met." With the current motion, the Petitioner offers information from the online encyclopedia *Wikipedia* stating that is "a sports title in the which is "assigned by the federal executive authority in the field of Physical Education and Sport." However, the eligibility criteria for athletes are not described. We also note that there are no assurances about the reliability of the content from *Wikipedia*, an open, user-edited website.[3] *See Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Regardless, the Petitioner has not shown that her is documentation of her membership in an association in the field, rather than an award or title. Furthermore, the Petitioner has not provided sufficient evidence of the requirements for earning a in competitive sailing.

As documentation of her membership in the the Petitioner initially submitted a June 2015 letter from president of stating that she "is an active member" of and that, "[i]n compliance with the Federation's Regulations, membership is granted to athletes and/or coaches of good moral character and bearers of the titles or Candidate of We noted in our appellate decision that the record did not include evidence to support the claimed membership requirements. On motion, the Petitioner additionally provides her membership application for the containing her personal information along with a certified English language translation, but there is no date indicating when the application was prepared or submitted. In addition, she offers regulations and an accompanying proper translation which include a section about the federation's requirements for individual members. Section 4.1.1. of the regulations states: "Individual members of the Federation may be natural persons over 18 years of age who have the title of and candidate and have an excellent reputation in the field of sailing." The record, however, does not sufficiently document that a master of sports or its candidacy requires outstanding achievements. Furthermore, the evidence does not demonstrate that having "an excellent reputation in the field of sailing" is commensurate with outstanding achievements in her sport. As the Petitioner has not shown that requires outstanding

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[3] Online content from *Wikipedia* is subject to the following general disclaimer:

> WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . ***Wikipedia* cannot guarantee the validity of the information found here**. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on June 28, 2017, copy incorporated into the record of proceedings.

achievements of its members, as judged by recognized national or international experts in competitive sailing, she has not demonstrated that she meets this regulatory criterion.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

On motion, the Petitioner submits a letter from director of public relations for the stating that media reports about her aired "many times on Central Russian Channels" including and and that those "channels broadcast on the whole territory of Russia, have a big target audience and, correspondingly, high rating indices." In addition, the Petitioner offers a letter from host of and indicating that she "was a guest of the sports TV show aired [*sic*] on and that her "interview was also aired by the The record, however, does not include a full transcript of the media reports airing on the aforementioned channels to demonstrate that the programming was "about" the Petitioner as required under this criterion. Furthermore, the evidence does not include the title, date, and author of the media reports, and any necessary translation.[4] Lastly, the Petitioner has not offered supporting documentation establishing that the listed channels are major media. Accordingly, she has not established that she meets this regulatory criterion.

As the evidence does not establish that the Petitioner has received a major, internationally recognized award, or that she meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3), the motion to reopen will be denied.

C. Final Merits Determination

Even if the Petitioner had submitted the requisite initial evidence satisfying at least three criteria, she has not demonstrated, by a preponderance of the evidence, that she has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. In this matter, we determine that the Petitioner has not shown her eligibility.

[4] We acknowledge that letter does identify the two dates his interview of the Petitioner aired on and but the information provided is not sufficient to meet the remaining requirements under 8 C.F.R. § 204.5(h)(3)(iii). For instance, the record does not include a transcript from his show demonstrating that it was about the Petitioner or evidence indicating that his show is a form of major media.

The Petitioner provided evidence indicating that she won first place in multiple Russian sailing competitions between 2006 and 2011, such as the and the In addition, she was "awarded the Title ' ' in 2006. The Petitioner, however, has not demonstrated that such achievements have garnered her *sustained* national or international acclaim as a sailing competitor and that they reflect a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). In this case, the Petitioner has not established that she has received any nationally or internationally recognized competitive sailing awards since 2011. Furthermore, the record does not show that she has participated in any national or international sailing events for the past three years, or has successfully competed against top competitors, reflecting sustained national or international acclaim or that she "is one of that small percentage who [has] risen to the very top of the field of endeavor." *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

In addition, the Petitioner has not demonstrated that the and required outstanding achievements of their members, as judged by recognized national or international experts. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). With respect to her most recent membership in from 2015-16, she has not shown that she has been competing in this country as a member of teams with renowned or accomplished sailing competitors, demonstrating that her latest "achievements have been recognized in the field of expertise" or are consistent with sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(3).

The Petitioner offered several media reports mentioning her competitive sailing results. However, as fully discussed in our previous decision, she did not demonstrate that any of the articles were in major media and the majority of them were not about her. While the newly submitted letters from and assert that media reports about the Petitioner aired on and the record does not include transcripts from those television shows and she has not offered supporting evidence demonstrating that the shows featuring her were major media. Lastly, we note that the media coverage of the Petitioner's sailing accomplishments is almost entirely from 2011 and earlier. The lack of more recent media coverage is not consistent with a finding that she has sustained national or international acclaim in her sport.

We acknowledge one recent article 2015) about the Petitioner in "a New York newspaper in Russian language distributed in Tri-State area." However, as explained in our previous decision, the evidence does not establish that this publication's online visitors and readership numbers elevate the newspaper to a form of major media relative to other online news sources.[5] Furthermore, the Petitioner has not shown that news coverage

[5] website states that its online newspaper attracts "108,000 unique visitors monthly" or "3,600 unique visitors daily" and the newspaper's media kit lists an "estimated 61,000 weekly readership." We note, however, that

demonstrates that she has sustained acclaim in Russia, the United States, or any other country. For the above reasons, the record does not demonstrate that she has received media attention that is indicative of sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act.

With regard to her judging experience, the Petitioner provided her judging logbook and a letter from the identifying competitions she judged from 2008 until 2013. The aforementioned documents listed events such as the and An evaluation of the significance of the Petitioner's judging experience is acceptable under *Kazarian,* 596 F. 3d at 1121-22, to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. The Petitioner has not shown that her judging experience sets her apart from others in her field, such as by providing evidence documenting the reputation and stature of the aforementioned events and their competitors. Accordingly, the evidence under this criterion does not support a finding that she "is one of that small percentage who [has] risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). Furthermore, as the record does not show that the Petitioner has participated as a judge after 2013, the evidence is not indicative of sustained national or international acclaim in her sport.

In addition, as noted above, the Petitioner offered reference letters discussing her coaching methodologies and authorship of three research papers. She did not, however, establish that her work was of major significance in the field of sailing or that her publication record sets her apart through a "career of acclaimed work." The statute requires the Petitioner to submit "extensive documentation" of her sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Further, Petitioner did not show that her articles have been frequently cited by others in her field, nor did she otherwise demonstrate a level of interest in her work commensurate with sustained national or international acclaim at the top of her field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(3).

Finally, regarding her recent work as a coach, the Petitioner has not established that her experience in Russia and at the in New York is commensurate with sustained acclaim at the very top of her field. Since coming to the United States in January 2015, there is no indication that she has coached accomplished U.S. athletes. Although the record shows that the Petitioner has expanded her sailing expertise to judging, academic studies, and coaching while still competing, she has not demonstrated her extraordinary ability, either individually as a competitor or

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USCIS need not rely on self-promotional material. *See Braga v. Poulos,* No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9) (concluding that USCIS did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

collectively as a judge, coach, or sailing instructor. Accordingly, we need not determine whether she is coming to "continue work in the area of extraordinary ability" under section 203(b)(1)(A)(ii).

III. CONCLUSION

In summary, the Petitioner is not eligible because she has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Furthermore, even if she had met a third criterion, her evidence is not sufficient to establish that she has sustained national or international acclaim, or that she is one of the small percentage at the very top of her field of endeavor.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of R-S-*, ID# 457137 (AAO July 26, 2017)